

Overview of Section 404 of the Clean Water Act

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged and fill material into waters of the United States. The phrase "waters of the United States" defines the extent of geographic jurisdiction of the Section 404 program. The term includes such waters as rivers, lakes, streams and most wetlands. Regulated activities include fills for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and conversion of wetlands to uplands for farming and forestry. Section 404(f) exempts some activities from regulation under Section 404. These activities include many ongoing farming, ranching and silviculture practices. In order to be exempt, the activities cannot be associated with bringing a wetland into agricultural production or converting an agricultural wetland to a nonwetland area.

What does Section 404 require?

Section 404 requires a landowner to obtain a permit from the U.S. Army Corps of Engineers (USACE) or a state with an EPA-approved program prior to beginning any nonexempt activity involving the placement of dredged or fill material into waters of the United States, including wetlands.

The basic premise of the program is that no discharge of dredged or fill material can be permitted if a practicable alternative exists that is less damaging to the aquatic environment or if the nation's waters would be significantly degraded. In other words, when you apply for a permit, you must show that you have:

- taken steps to avoid wetland/stream impacts where practicable.
- minimized potential impacts to wetlands/streams.
- provided compensation for any remaining, unavoidable impacts.
- thorough activities to restore or create wetlands/streams.

Who is involved in regulation?

The CWA vests USACE, or a state with an EPA-approved program, with the authority to issue Section 404 permits. USACE administers the day-to-day program, including permit decisions and jurisdictional determinations, develops policy and guidance and enforces Section 404 provisions.

The EPA develops and interprets environmental criteria used in evaluating permit applications, determines the scope of geographic jurisdiction, approves and oversees state assumption, identifies activities that are exempt and reviews/comments on individual permit applications. The EPA has authority to veto USACE's permit decisions.

What types of Section 404 permits are issued by USACE?

Individual permits are issued to a single entity (individuals or companies) to authorize specific activities. Once a complete permit application is received by USACE, a public notice is issued that describes the proposed project. USACE evaluates all comments received and makes a final permit decision.

General permits are issued to the public at large to authorize specific activities that have minimal environmental impacts, such as bank stabilization activities or construction of farm buildings. A general permit can be issued on a state, regional or nationwide basis. Activities authorized by a general permit require less review than an individual permit would require.